

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 293

June 28, 1995, 9:35 a.m.
Page S-9201 Temp. Record

PRIVATE SECURITIES LITIGATION/State of Mind Evidentiary Standards

SUBJECT: Private Securities Litigation Reform Act of 1995 . . . S. 240. Specter amendment No. 1485.

ACTION: AMENDMENT AGREED TO, 57-42

SYNOPSIS: As reported with an amendment in the nature of a substitute, S. 240, the Private Securities Litigation Reform Act, will enact changes to current private securities litigation practices in order to discourage unjust suits and to provide better information and protection from fraud for investors.

The Specter amendment would establish the evidentiary standards that might be used to determine a defendant's state of mind in those cases in which the plaintiff may recover money damages only by proving a particular state of mind. More specifically, for each allegedly fraudulent act or omission, the plaintiff could be allowed to allege facts: that showed the defendant had both motive and opportunity to commit fraud; or that constituted strong circumstantial evidence of conscious misbehavior or recklessness by the defendant. (This evidentiary standard was established in *Beck v. Manufacturers Hanover Trust Co.*)

Those favoring the amendment contended:

Our disagreement appears to be slight. We are pleased that this substitute amendment adopts the most stringent pleading standard that has been set forth by any court for determining the state of mind of a defendant. That standard was established in *Beck*. However, we think the amendment should have gone a step further--it should have listed the evidentiary standards that were set forth in that case. The Specter amendment would correct this deficiency by noting that courts may use those specific evidentiary standards. Our colleagues believe this amendment is too restrictive, though they have not offered any reason why. We support the stringent pleading standard, we support the evidentiary standards that were given in the case that established this standard, and, in the absence of any arguments against this amendment, we intend to vote for it.

Those opposing the amendment contended:

(See other side)

YEAS (57)			NAYS (42)			NOT VOTING (0)	
Republicans (15 or 28%)	Democrats (42 or 91%)		Republicans (38 or 72%)	Democrats (4 or 9%)		Republicans (0)	Democrats (0)
Abraham	Akaka	Johnston	Ashcroft	Hatch	Bingaman	VOTING PRESENT(1) Bond	
Chafee	Baucus	Kennedy	Bennett	Hatfield	Bumpers		
Cochran	Biden	Kerrey	Brown	Helms	Harkin		
Cohen	Boxer	Kerry	Burns	Hutchison			
Jeffords	Bradley	Kohl	Campbell	Inhofe			
Kassebaum	Breaux	Lautenberg	Coats	Kempthorne			
Lugar	Bryan	Leahy	Coverdell	Kyl			
Mack	Byrd	Levin	Craig	Lott			
McCain	Conrad	Lieberman	D'Amato	McConnell			
Packwood	Daschle	Mikulski	DeWine	Murkowski			
Roth	Dodd	Moseley-Braun	Dole	Nickles			
Santorum	Dorgan	Moynihan	Domenici	Pressler			
Shelby	Exon	Murray	Faircloth	Simpson			
Snowe	Feingold	Nunn	Frist	Smith			
Specter	Feinstein	Pell	Gorton	Stevens			
	Ford	Pryor	Gramm	Thomas			
	Glenn	Robb	Grams	Thompson			
	Graham	Rockefeller	Grassley	Thurmond			
	Heflin	Sarbanes	Gregg	Warner			
	Hollings	Simon					
	Inouye	Wellstone					
						EXPLANATION OF ABSENCE 1—Official Business 2—Necessarily Absent 3—Illness 4—Other	
						SYMBOLS: AY—Announced Yea AN—Announced Nay PY—Paired Yea PN—Paired Nay	

Compiled and written by the staff of the Republican Policy Committee—Don Nickles, Chairman

The Specter amendment would unduly burden plaintiffs. We support the high pleading standard in this bill, but we do not think it is fair to further burden plaintiffs by then specifying that they use the high evidentiary standard from the *Beck* case too. The Specter amendment, by codifying this language, would do more than suggest the use of this evidentiary standard; it would effectively compel it. We must therefore vote to reject the Specter amendment.